could very well be the case. But I am of the opinion that the defendant in this context cannot have a split personality. He is in fact both a beneficiary of the estate of the deceased as well as the operator of the accounts. He even promised in his letter that he hoped to arrange to sell the properties in the charge and to pay the balance owing to the plaintiff. This is not merely an implication to pay but a clear unequivocal promise to pay. It was not his business to write the letter as at that time there was an administrator appointed, that was the Official Administrator and it relates to his account. He is clearly "the person accountable therefor ..." under section 26(2) of the Ordinance. Again, I am of the opinion that the defendant cannot claim to be acting on behalf of the estate of his father as there was an administrator already appointed.

All that is necessary for an acknowledgment which takes the case out of the statute is that the debtor should recognise the existence of the debt, or that the person who might rely on the statute should recognise the rights against himself (see *Wright* v. *Pepin*[6]). The acknowledgment need not even contain a promise to pay and it is immaterial that the amount of the debt is not expressed in the acknowledgment or that the correctness of the amount claimed is disputed in the acknowledgment (see *Halsbury's* Laws of England, 3rd Edition, page 300).

The words "the person liable or accountable therefor" means generally anyone who is entitled to tender the money and whose tender the creditor is bound to accept. In this case if the defendant were to tender the money, even if he were to state that he did so in his capacity as a beneficiary of the estate of his father, the plaintiff must accept his tender because it was the defendant's own debt. In the case of *Lewin* v. *Wilson*[7] Lord Hobhouse stated as follows at page 646:

"In this case their Lordships think it sufficient to say that payments made by a person who under the terms of the contract is entitled to make a tender, and from whom the mortgagee is bound to accept a tender, of money for the defeasance or redemption of the mortgage, are payments which by section 30 give a new starting point for the lapse of time."

The principle of the above case is followed by *Re Lord Clifden.*[8]

In *Harlock* v. *Ashberry,*[9] Jessel M.R. at page 546 stated as follows: —

"Therefore on principle and on authority I think that the payment to take the case out of the statute must be a payment by a person who is bound to pay the principal or interest of the mortgage money."

By way of analogy, even though the instant case did not involve any payment, the defendant is the person who is bound to pay towards the principal and interest and the fact that he had made such promise to pay revives the cause of action so as to start running afresh from the date of acknowledgment.

I therefore enter judgment for the agreed sum of $44,250.72 with interest thereon at 10.8% with monthly rests as from December 26, 1972 to date of realisation and costs to be taxed.

Order accordingly.

Solicitors: *Foo Say Ghee & Co.; Nayagam & Co.*

CHU BEOW HIN v. PUBLIC PROSECUTOR

[A.C.J. (Mohamed Zahir J.) February 24, 1980]
[Kota Bharu — Criminal Appeal No. 32 of 1977]

Price Control — Failure to affix tags on cloths — Plea of guilt — Order of forfeiture and imprisonment — Appeal against sentence — Whether President had discretionary power to order forfeiture — Price Control Act, 1946 (Revised 1973), ss. 14(2)(a) & (b) & 22(1) — Criminal Procedure Code (F.M.S. Cap. 6), s. 407.

Interpretation — Rule of construction of penal law — Act to be construed narrowly in favour of person proceeded against.

Criminal Law and Procedure — Scope of s. 407 of Criminal Procedure Code — Application of rule of construction.

The appellant in this case had pleaded guilty to the charge of failing to affix tags on cloths, an offence under section 22(1) of the Price Control Act 1946 (Revised 1973). The learned President fined him in the sum of $5,000 in default 8 months' imprisonment, and ordered cloths seized to be confiscated. The appellant appealed against sentence.

Held, allowing the appeal: (1) the rule of construction of penal law is that acts imposing criminal or other penalties should be clear and unambiguous and should be construed narrowly in favour of the person proceeded against;

(2) in the absence of any express provisions of the Price Control Act, the Court can only exercise the provisions of section 407 of the Criminal Procedure Code as to the disposal of properties and in the circumstances of this case the lower court has no discretionary power to forfeit the cloths seized from the appellant's shop under the Price Control Act and such powers should be exercised under section 407 of the Criminal Procedure Code under which in this case there is no discretionary power to forfeit;

(3) the goods should therefore be returned to the appellant.

CRIMINAL APPEAL.

Anthony Gomez for the appellant.

Mohamed Raus bin Shariff (Deputy Public Prosecutor) for the prosecution.

Cur. Adv. Vult.

Mohamed Zahir J.: The appellant appeals against the sentence of the learned President who fined the appellant in the sum of $5,000 in default 8 months' imprisonment and ordered cloths seized to be confiscated. The appellant was charged for committing an offence under section 22(1) of the Price Control Act, 1946 (Revised 1973) for failing to affix tags on the cloths. He pleaded guilty to the charge.

The only ground of appeal is that the sentence is excessive. The value of the cloths was, as claimed by the appellant in his petition of appeal, $20,000 although this was not disclosed in the record of appeal.

In mitigation, the appellant who appeared in person prayed for a lenient sentence and stated that the price of the cloths had not been paid in full and prayed that the cloths be returned to him. He further stated that only a few of the goods in his shop were not tagged, whereas the rest were.

It is noted from the record that the prosecution made no submission about the sentence before the imposition of the sentence by the learned President. The President justified his sentence on setting out circumstances which he himself came to know such as the retailer could sweet-talk a customer into buying

if there was no price tag and on the inflation and he also gave the reasons for the Government imposing the price tag laws. But the main thing to be considered is whether in law the President possesses a discretionary power to forfeit the cloths under the Act and if he has such power he has exercised it judicially.

It is to be noted that there is no separate provision for forfeiture or confiscation in the Price Control Act. Section 22 is the penal section and it is silent on the forfeiture. The only section that mentions forfeiture is section 14(2) which reads as follows: —

"(a) if, within thirty days of the seizure, no proceedings are instituted against any person for an offence alleged to have been committed in relation to those goods, the goods and accompanying appliances shall be restored to the person from whom they were seized if he can be found and, if not, shall be disposed of as may be directed by a Magistrate; or

(b) if, within thirty days of the seizure, proceedings are instituted against any person, the goods and accompanying appliances may be forfeited or otherwise disposed of in such manner as the court may direct."

But it should be noted that section 14(2) comes under the sub-heading of "General powers of Price Controller and other officers". It is not a penal provision clearly and unequivocably to be meted out to an offender.

Contrast this with Control of Supplies Act, 1961 (Revised 1973) with its section 26(1): —

"Where any person is convicted of an offence against this Act the court may order the confiscation in whole or in part of —

(a) any controlled article in respect of which the offence has been committed which has been seized by, or has otherwise come into the possession of the Controller or any person acting under his authority or any vehicle, vessel or other article, the property of the accused, by means of which the offence has been committed or which is intended to be used for the commission of an offence against this Act; or

(b) the proceeds of sale of any such controlled article if it has been sold under section 12.

(2) Where confiscation is ordered under sub-section (1), the court shall deliver the controlled article, proceeds of sale, vehicle, vessel or other article confiscated (if not already in possession of the Controller) to the Controller or to any person designated by him, and shall give directions as to their disposal."

Contrast it also with Fisheries Act, 1963 with its section 14(1): —

"An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been had and an order for the forfeiture of such thing shall be made if it is proved to the satisfaction of the court that —

(a) the offence committed is for —

(i) using any net, instrument, fishing material or appliance which is prohibited by or under this Act or any regulations or rules made thereunder; or

(ii) doing or carrying on an act without a licence or permit required under this Act or any regulations or rules made thereunder; and

(b) that thing was the subject matter of, or was used in the commission of, the offence, notwithstanding that no person may have been convicted of such offence."

Section 92(4) of the Road Traffic Ordinance provides as follows: —

"An order for the forfeiture or for the release of any motor vehicle seized under the provisions of sub-section (2) shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence against this section has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence."

Section 126 of the Customs Act, 1967 provides as follows: —

"All goods liable to seizure under the provisions of this Act, shall be liable to forfeiture."

and section 127(1) of the same Act reads as follows: —

"An order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this Act shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence against this Act or any regulation made thereunder has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence."

Section 30(2) of the Dangerous Drugs Ordinance, 1952 provides as follows: —

"All things liable to seizure under this section, shall be liable to forfeiture."

and section 30(6) of the same Ordinance reads as follows: —

"An order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this section shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of the court that an offence under this Ordinance or any breach of the restrictions or conditions subject to or upon which any licence, permit or authorization has been granted has been committed and that the thing was the subject matter of or was used in the commission of the offence notwithstanding that no person may have been convicted of such offence or breach."

Subsections 8, 9, 10 and 11 of section 30 of the Dangerous Drugs Ordinance provide the procedures to be taken by the court if the goods are claimed by a person alleging himself to be the owner. Section 128 of the Customs Act also provides a similar procedure where a person alleges himself to be the owner.

Section 426C(1) of the National Land Code reads as follows:

"All things seized in exercise of the powers conferred by paragraph (b) of sub-section (1) of section 426A shall be liable to forfeiture."

and thereafter the Code provides the procedure for seizure including summons to prove ownership.

Section 74(1) of the Animals Ordinance, 1953 provides as follows: —

"Whenever any person shall have been convicted of an offence against this Ordinance the court convicting such person may, in addition to or in lieu of imposing any other punishment, order that any animal, bird, carcase or article in respect of which such offence has been committed shall be forfeited."

Again, there was the usual procedure as to the claim of ownership under the Animals Ordinance.

All these provisions are conspicuously absent from the Price Control Act. The forfeiture clause under section 14(1)(b) is not clear whether it is intended to be a penalty against the offender. It may even be argued that the court has the power to forfeit the goods even if before the termination of the case or

even if the offender is not found guilty. However, I do not think this can be the correct interpretation of the section. It could even be argued that following section 14(2)(a), in the event the owner was not found then the goods may be forfeited or if there is an owner it should be disposed of by the court in such manner as it may direct and the procedure to be followed as to the disposal should be under section 407 of the Criminal Procedure Code in view of the absence of the Act's own provisions as to forfeiture. It can be further argued that the power to forfeit rests with the Price Controller as the sections come under the sub-heading of the general powers of the Price Controller unless otherwise disposed of in such manner as the court may direct. Whatever the true construction may turn out to be, the law on this point is vague, indirect and inconclusive. In other words, there is no express penalty provision against an offender as to forfeiture in the Price Control Act.

Section 407 of the Criminal Procedure Code states that the court's power to order a forfeiture is subject to any special provisions relating to forfeiture contained in the written law under which the conviction was had. So as these provisions are absent in the Price Control Act except section 14(2)(b) which merely makes an oblique reference and not being comprehensive, section 407 of the Criminal Procedure Code should be relied by the court in disposing the goods. "Forfeiture" under section 14(2)(b) is in an indirect form. It is incomprehensible if, as under section 14(2)(a), the owner is not found the goods shall be disposed of in the manner directed by the court if there are no proceedings within 30 days, whereas if there are proceedings within the period the goods may be forfeited irrespective of whether there is an owner or not. In other words, since reference for forfeiture is made whenever there are proceedings instituted within 30 days, then if this argument is correct, all those goods where proceedings are not instituted within 30 days are not subject to forfeiture. I do not think this is a reasonable argument. To my mind section 14(2)(a) is merely intended to protect the public in that Price Control Officers cannot retain the goods for more than 30 days without someone being charged for an offence in relation to those goods and section 14(2)(b) gives the powers to the Price Controllers to retain the goods for the purpose of the hearing. Both limbs 14(2)(a) and 14(2)(b) are under the court's general powers of section 407 of the Criminal Procedure Code. It cannot be argued that the court will have to exercise section 407 of the Criminal Procedure Code in dealing with circumstances under section 14(2)(a) and under section 14(2)(b) if proceedings are instituted within 30 days simply because there are no procedures under section 14(2)(b) or indeed anywhere else in the Price Control Act.

In what circumstances can goods under section 407 be forfeited? I think it is confined to those goods which are by themselves an offence for anyone to own or possess or to have custody e.g. drugs, dangerous weapons, smuggled goods. But I am of the opinion that the court does not have jurisdiction to order the forfeiture of a motor taxi for instance where the driver is convicted for dangerous driving as this is not provided for under the Road Traffic Ordinance.

The rule of construction of penal law is that acts imposing criminal or other penalties should be clear and unambiguous and should be construed narrowly in favour of the person proceeded against. *Maxwell* on Interpretation of Statutes, 12th Edition at page 239 states as follows:

"The principle applied in construing a penal Act is that if, in construing the relevant provisions, 'there appears any reasonable doubt or ambiguity,' it will be resolved in favour of the person who would be liable to the penalty. 'If there is a reasonable interpretation which will avoid the penalty in any particular case,' said Lord Esher M.R., 'we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections'."

Appearing at the same page is the following passage: —

"If the language of the statute is equivocal and there are two reasonable meanings of that language, the interpretation which will avoid the penalty is to be adopted. The court must always see that the person to be penalised comes fairly and squarely within the plain words of the enactment."

and at the bottom of the same page and on the top of page 240, it reads as follows: —

"The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

In the circumstances, in the absence of any express provision of the Price Control Act, the court can only exercise the provisions of section 407 of the Criminal Procedure Code as to the disposal of properties and in the circumstances of this case the lower court has no discretionary power to forfeit the cloths seized from the appellant's shop under the Price Control Act and such powers should be exercised under section 407 of the Criminal Procedure Code under which in this case there is no discretionary power to forfeit. As such I am of the opinion that the appeal as regards sentence be allowed and I order that the goods be returned to the appellant. As regards the fine of $5,000 I think this is quite adequate and I confirm this part of the sentence.

Appeal allowed.

Solicitors: *Gomez & Co.*